

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
JOHN WILEY & SONS, INC.,

ANSWER TO
AMENDED
COMPLAINT

Plaintiff,

08 CV 7036

- against -

BORGASORUS BOOKS, INC.,
SHAWN GROOMS AND JENNIFER
GROOMS ALL D/B/A BORGASORUS
BOOKS AND JOHN DOES NOS. 1-5,

Judge Chin

Defendants.

-----X

Defendants, **BORGASORUS BOOKS, INC., SHAWN GROOMS AND JENNIFER GROOMS ALL D/B/A BORGASORUS BOOKS**, by their attorneys, **BOEGGEMAN, GEORGE & CORDE, P.C.**, as and for an answer to plaintiff's Complaint alleges as follows:

Nature of the Action

1. The defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph designated "1" of plaintiff's Complaint and respectfully refers all questions of law to the Honorable Court.

Jurisdiction and Venue

2. The defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraphs designated "2" of plaintiff's Complaint and respectfully refers all questions of law to the Honorable Court.

3. The defendants deny each and every allegation contained in paragraph designated "3" of plaintiff's Complaint and respectfully refers all questions of law to the Honorable Court.

Parties

4. The defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraphs designated "4" and "8" of plaintiff's Complaint.

The Business of Plaintiff

5. The defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraphs designated "10" and "11" of plaintiff's Complaint.

6. The defendants deny each and every allegation contained in paragraphs designated "12", "13" and "14" of plaintiff's Complaint.

Wiley's Copyrights and Trademarks

7. The defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraphs designated "15" and "17" of plaintiff's Complaint and respectfully refers all questions of law to the Honorable Court.

8. The defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph designated "16" of plaintiff's Complaint.

The Infringing Acts of Defendants

9. The defendants deny each and every allegation contained in paragraph designated "18" of plaintiff's Complaint.

AS AND FOR AN ANSWER TO THE FIRST CLAIM FOR RELIEF

10. These answering defendant repeat, reiterate and realleges each and every response previously set forth above with the same force and effect as if fully set forth at length herein in responding to paragraph designated "19" of plaintiff's Complaint.

11. The defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraphs designated "20" of plaintiff's Complaint.

12. The defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraphs designated "21" of plaintiff's Complaint and respectfully refers all questions of law to the Honorable Court.

13. The defendants deny each and every allegation contained in paragraphs designated "22", "23", "24" and "25" of plaintiff's Complaint.

AS AND FOR AN ANSWER TO THE SECOND CLAIM FOR RELIEF

14. These answering defendant repeat, reiterate and realleges each and every response previously set forth above with the same force and effect as if fully set forth at length herein in responding to paragraph designated "26" of plaintiff's Complaint.

15. The defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraphs designated "27" of plaintiff's Complaint.

16. The defendants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraphs designated "28" of plaintiff's Complaint and respectfully refers all questions of law to the Honorable Court.

17. The defendants deny each and every allegation contained in paragraphs designated "29", "30", "31" and "32" of plaintiff's Complaint.

AS AND FOR AN ANSWER TO THE THIRD CLAIM FOR RELIEF

18. These answering defendant repeat, reiterate and realleges each and every response previously set forth above with the same force and effect as if fully set forth at length herein in responding to paragraph designated "33" of plaintiff's Complaint.

19. The defendants deny each and every allegation contained in paragraph designated "34" of plaintiff's Complaint.

AS AND FOR A FIRST, SEPARATE AND COMPLETE DEFENSE

20. Defendants use of trademarks is limited to identifying the publisher of the book and constitutes fair use of the trademark.

AS AND FOR A SECOND, SEPARATE AND COMPLETE DEFENSE

21. Defendants use of material did not amount to infringement.

AS AND FOR A THIRD, SEPARATE AND COMPLETE DEFENSE

22. Defendant sells used books that were sold in the United States by other parties before the defendants purchased the books for resale and therefore defendants are protected by the "First Sale" Doctrine.

AS AND FOR A FOURTH, SEPARATE AND COMPLETE DEFENSE

23. Books purchased by the defendants were printed in the United States of America and thus were not imported and not a violation of 17 U.S.C. §501.

AS AND FOR A FIFTH, SEPARATE AND COMPLETE DEFENSE

24. Plaintiff's trademark was expired.

AS AND FOR A SIXTH, SEPARATE AND COMPLETE DEFENSE

25. All books copyrighted by the plaintiff were created and written in the United States and were thus made in the United States.

AS AND FOR A SEVENTH, SEPARATE AND COMPLETE DEFENSE

26. The books were not imported by the defendants into the United States of America.

AS AND FOR A EIGHTH, SEPARATE AND COMPLETE DEFENSE

27. That these answering defendants specifically deny the amount of damages alleged in the plaintiff's Complaint.

AS AND FOR A NINTH, SEPARATE AND COMPLETE DEFENSE

28. That this Court lacks jurisdiction over the person of the defendants herein.

AS AND FOR A TENTH, SEPARATE AND COMPLETE DEFENSE

29. Defendants had no reason to believe that the selling of books marked "international edition" was a violation of copyright or trademark laws.

AS AND FOR A ELEVENTH, SEPARATE AND COMPLETE DEFENSE

30. The representations made by the defendants were neither false nor misleading.

AS AND FOR A TWELFTH, SEPARATE AND COMPLETE DEFENSE

31. Plaintiff did not properly protect, identify and/or document its trademark and/or copyright.

AS AND FOR A THIRTEENTH, SEPARATE AND COMPLETE DEFENSE

32. Defendants client base only purchases used books and would not have purchased the books new.

AS AND FOR A FOURTEENTH, SEPARATE AND COMPLETE DEFENSE

33. The Complaint fails to state a claim upon which relief can be granted.

AS AND FOR A FIFTEENTH, SEPARATE AND COMPLETE DEFENSE

34. Venue is improper.

AS AND FOR A SIXTEENTH, SEPARATE AND COMPLETE DEFENSE

35. Plaintiff's claims are barred by the doctrines of acquiescence, estoppel, laches and waiver.

AS AND FOR A SEVENTEENTH, SEPARATE AND COMPLETE DEFENSE

36. Plaintiff's First Claim, if sustained, would provide plaintiff with adequate remedy and overlap plaintiff's Second and Third Claims, such that plaintiff's Second and Third Claims may not be maintained.

AS AND FOR A EIGHTEENTH, SEPARATE AND COMPLETE DEFENSE

37. Plaintiff's First and Second Claims, if sustained, would provide plaintiff with an adequate remedy and overlap plaintiff's Third Claims, such that plaintiff's Third Claim may not be maintained.

AS AND FOR A NINETEENTH, SEPARATE AND COMPLETE DEFENSE

38. Plaintiff's Claims are barred by the doctrine of exhaustion (first sale).

AS AND FOR A TWENTIETH, SEPARATE AND COMPLETE DEFENSE

39. Upon information and belief, plaintiff lacks standing to bring or assert some or all of the claims.

AS AND FOR A TWENTY-FIRST, SEPARATE AND COMPLETE DEFENSE

40. Plaintiff's claims and/or the remedies sought are barred by the First Amendment to the United States Constitution.

AS AND FOR A TWENTY-SECOND, SEPARATE AND COMPLETE DEFENSE

41. Plaintiff's Claims are barred or subject to dismissal for failure to comply with renewal, notice and registration requirements and with other necessary formalities.

AS AND FOR A TWENTY-THIRD, SEPARATE AND COMPLETE DEFENSE

42. Some or all of the copyrights on which plaintiff is relying have been forfeited or abandoned.

**AS AND FOR A TWENTY-FOURTH, SEPARATE
AND COMPLETE DEFENSE**

43. Some or all of plaintiff's claims are barred by the merger doctrine.

AS AND FOR A TWENTY-FIFTH, SEPARATE AND COMPLETE DEFENSE

44. Plaintiff has engaged in copyright and trademark abuse and misuse and has unclean hands.

AS AND FOR A TWENTY-SIXTH, SEPARATE AND COMPLETE DEFENSE

45. Plaintiff's actions in this regard amount to a violation of New York State and United States antitrust laws, including the Robinson-Patman Act.

**AS AND FOR A TWENTY-SEVENTH, SEPARATE
AND COMPLETE DEFENSE**

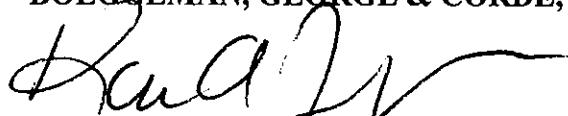
46. The court does not have subject matter jurisdiction over the Third Claim for Relief (Common Law Unfair Competition).

WHEREFORE, defendants, **BORGASORUS BOOKS, INC., SHAWN GROOMS AND JENNIFER GROOMS ALL D/B/A BORGASORUS BOOKS.,** demands judgment dismissing the plaintiff's Complaint together with the costs and disbursements of this action and attorneys fees.

Dated: White Plains, New York
April 24, 2009

Yours, etc.

BOEGGEMAN, GEORGE & CORDE, P.C.



KAREN A. JOCKIMO, ESQ. (9021)
Attorneys for the Defendants
Office and P.O. Address
1 Water Street, Suite 425
White Plains, New York 10601
(914) 761-2252

TO: WILLIAM DUNNEGAN, ESQ.
DUNNEGAN LLC
Attorneys for Plaintiff
Office & P.O. Address
350 Fifth Avenue
New York, New York 10118